

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Southwestern Bell Petitions for
Limited Modifications of LATA
Boundaries to Provide Expanded Local
Calling Service (ELCS)

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WC Docket No. 02-133

MEMORANDUM OPINION AND ORDER

Adopted: December 20, 2002

Released: December 20, 2002

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On March 29, 2002, Southwestern Bell Telephone Company (SWBT), pursuant to section 3(25) of the Communications Act of 1934, as amended,¹ filed two petitions to provide two-way, flat-rated, non-optional, expanded local calling service (ELCS) between various exchanges in Texas.² SWBT's petitions request limited modifications of two local access and transport area (LATA) boundaries.³ For the reasons stated below, we grant SWBT's requests.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers. IntraLATA ELCS routes can be ordered by a state commission.⁴ Under section 3(25)(B) of the

¹ See 47 U.S.C. § 153(25).

² See *Comment Sought on SWBT Request for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service Between Certain Exchanges in Texas*, WC Docket No. 02-134, Public Notice, DA No. 02-1310 (rel. June 4, 2002). In the first petition, SWBT requests ELCS between the Possum Kingdom and Graham exchanges, and between the Possum Kingdom and Jacksboro exchanges (SWBT Possum Kingdom Petition). In the second petition, SWBT requests ELCS between the Martins Mill and Tyler exchanges (SWBT Martins Mill Petition).

³ Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the Telecommunications Act of 1996 by a Bell Operating Company (BOC), as permitted under the AT&T Consent Decree, or "established or modified by a BOC after such date of enactment, and approved by the Commission." 47 U.S.C. § 153(25).

⁴ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

Act, requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission) exclusive jurisdiction over the modification of LATA boundaries.⁵ Applying a two-part test, the Commission will grant a request for an ELCS LATA modification where a petitioning BOC shows that the proposed modification is justified by a significant community of interest among the affected exchanges, and that the grant of the requested waiver will not have any anticompetitive effects.⁶ A BOC is deemed to have made a *prima facie* case supporting grant of the proposed modification if the ELCS petition: (1) has been approved by the state commission; (2) proposes only traditional local service (*i.e.*, flat-rated, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results, usage data, and descriptions of the communities involved; and (5) involves a limited number of customers or access lines.⁷

3. The SWBT petitions propose to establish two-way, flat-rated, non-optional ELCS, and are accompanied by an order issued by the Texas Public Utility Commission (PUC) approving the two ELCS requests on the basis that sufficient communities of interest exist to warrant such service, a statement that only traditional local service is proposed, poll results demonstrating that communities of interest exist between the respective exchanges,⁸ and a statement of the number of access lines involved.⁹ One party, Net Freedom Technologies, filed comments in response to the SWBT petitions, arguing that SWBT's provisioning of the expanded calling areas should be optional to consumers so that they can choose the plan that best fits their needs.

III. DISCUSSION

4. We conclude that SWBT has made its *prima facie* case and that its petitions satisfy the criteria established by Commission precedent. Applying the first part of the two-part test, we find that SWBT has shown that communities of interest exist among the affected exchanges. For

⁵ *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd. 14,392, 14,399 (1999).

⁶ *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997). In this order, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to act on petitions to modify LATA boundaries. *Id.* at 10657-58. See also *Application for Review of Petition for Modification of LATA Boundary*, FCC 02-233, Order on Review, 17 FCC Rcd 16952 (2002).

⁷ *Id.* at 10659.

⁸ 90.52 percent of Possum Kingdom customers returning ballots voted in favor of ELCS to Graham and 83.56 percent of those customers returning ballots voted in favor of ELCS to Jacksboro. SWBT Possum Kingdom Petition at 2. 78.46 percent of Martins Mill customers returning ballots voted in favor of ELCS to Tyler. SWBT Martins Mill Petition at 2.

⁹ The Possum Kingdom exchange has 1,952 access lines, while the Graham exchange has 9,116 access lines and the Jacksboro exchange has 3,192 access lines, respectively. SWBT Possum Kingdom Petition at 2. The Martins Mill exchange has 776 access lines and the Tyler exchange has 95,705 access lines. SWBT Martins Mill Petition at 2.

example, many of the medical facilities, physicians, major repair and supply services, and places of employment used by the residents of Possum Kingdom are either in Graham or Jacksboro.¹⁰ Similarly, doctors and hospitals located in the Tyler exchange provide medical service to the residents of Martins Mill.¹¹ SWBT also proposes offering two-way, flat-rated, non-optional local service, a further indicator that communities of interest exist. Because the Texas PUC determined that sufficient communities of interest exist to justify non-optional service, we reject Net Freedom Technologies' contention that SWBT should offer optional ELCS in the exchanges at issue.

5. Applying the second part of the two-part test, we find that granting the SWBT petitions would have a minimal effect upon competition because the ELCS requests would affect a small number of access lines.¹² Most significantly, however, SWBT has opened its market to competition in Texas and, accordingly, has been granted authority to offer long distance service in that state.¹³ As a result, we believe that granting SWBT's petitions serve the public interest by permitting minor LATA modifications where such modifications are necessary to meet the needs of local subscribers. Accordingly, we approve SWBT's petitions for limited LATA modifications to provide two-way, flat-rated, non-optional ELCS.

6. We grant this relief solely for the limited purpose of allowing SWBT to provide ELCS between the specific exchanges or geographic areas identified in these requests. The LATA is not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, flat-rated, non-optional ELCS between the specified exchanges will be treated as intraLATA service, and the provisions of the Act governing intraLATA service will apply.¹⁴ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply.

VI. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the requests of

¹⁰ SWBT Possum Kingdom Petition at Attach. A, p. 2.

¹¹ SWBT Martins Mill Petition at 6.

¹² See *supra* n.9. In assessing the number of lines affected we note that in the case of the Possum Kingdom request, the great majority of calls will be made from the Possum Kingdom exchange into the Graham and Jacksboro exchanges. Accordingly, for purposes of this petition, the access lines we consider are the 1,952 lines in Possum Kingdom. Similarly, the majority of calls in the Martins Mill petition will be made from the Martins Mill exchange into the Tyler exchange, and therefore, we consider the 776 access lines in Martins Mill for the purposes of that petition.

¹³ *Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000).

¹⁴ The BOC may provide ELCS service without meeting the section 271 requirements, see 47 U.S.C. § 271(a), and a separate affiliate is not required, see 47 U.S.C. § 272(a)(2)(B).

Southwestern Bell Telephone Company for LATA modifications for the limited purpose of providing two-way, flat-rated, non-optional ELCS at specific locations, identified in WC Docket No. 02-133, ARE APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

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Wireline Competition Division